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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,181	07/25/2003	George N. Kringel	03946-P0001A	3863
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ST. ONGE STEWARD JOHNSTON & REENS, LLC			WUJCIAK, ALFRED J	
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STAMFORD, CT 06905-5619			PAPER NUMBER	

3632

DATE MAILED: 02/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/627,181	<b>Applicant(s)</b> KRINGEL ET AL.	
	<b>Examiner</b> Alfred Joseph Wujciak III	<b>Art Unit</b> 3632	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2005.  
 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,2,6-13,16,17,19-22,25-28,30-38,41 and 42 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) ☒ Claim(s) 42 is/are allowed.  
 6) ☒ Claim(s) 1,2,6-13,16,17,19-22,25-28,30-33,35-38 and 41 is/are rejected.  
 7) ☒ Claim(s) 34 is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☒ The drawing(s) filed on 25 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) ☐ All b) ☐ Some \* c) ☐ None of:  
 1. ☐ Certified copies of the priority documents have been received.  
 2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
 \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)  
 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.  
 4) ☒ Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_.  
 5) ☐ Notice of Informal Patent Application (PTO-152)  
 6) ☐ Other: \_\_\_\_\_.

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### **DETAILED ACTION**

This is the third non-final office action for the serial number 10/627,181, PRODUCT DISPLAY DEVICE, filed on 7/25/03.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 27 and 31 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent # 6,820,770 to Makino et al.

Makino et al. teaches a device comprising a base (116) defining a receiving area, a back member (118) extending upwardly from the base, an adjustable tensioner (110, 120) and a retaining member (106) adapted to be coupled to a container and to the tensioner. The tensioner comprises a slider (110) and a back bracket (120) moveable relative to each other for tensioning of the retaining member during adjustment of the tensioner. The retaining member comprises one rigid section.

#### ***Claim Rejections - 35 USC § 103***

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10-11, 21-22, 25, 28, 33 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Makino et al. in view of US Patent # 4,767,092 to Weatherly.

Makino et al. teaches a device comprising a base (116) defining a receiving area, a back member (118) extending upwardly from the base, an adjustable tensioner (110, 120) and a retaining member (106) adapted to be coupled to a container and to the tensioner. The tensioner comprises a slider (110) and a back bracket (120) moveable relative to each other for tensioning of the retaining member during adjustment of the tensioner. The retaining member comprises one rigid section.

Makino et al. teaches the retaining member is a loop but fails to teach the loop is flexible. It would have been obvious for one of ordinary skill in the art at the time the invention was made to have modified the loop to flexible to provide convenience for inserting the neck of container through the loop.

Makino et al. teaches the device but fails to teach the device is adapted to be attached to a store shelf. Weatherly teaches the device has connector for attaching to a store shelf. It would have been obvious for one of ordinary skill in the art at the time the invention was made to have added connector to Makino et al.'s device as taught by Weatherly to provide convenience for mounting device on shelf.

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In regards to claim 21, Makino et al. in view of Weatherly teaches all elements above but fails to teach the use of elements in method. It would have been obvious for one of ordinary skill in the art at the time the invention was made to have specified elements in step to provide convenience for setting up elements together.

Claims 1-2, 6-9, 30 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Makino et al. in view of US Patent # 5,167,392 to Henricksen.

Makino et al. teaches a device comprising a base (116) defining a receiving area, a back member (118) extending upwardly from the base, an adjustable tensioner (110, 120) and a retaining member (106) adapted to be coupled to a container and to the tensioner. The tensioner comprises a slider (110) and a back bracket (120) moveable relative to each other for tensioning of the retaining member during adjustment of the tensioner. The retaining member comprises one rigid section.

Makino et al. teaches the base but fails to teach the base having a protuberance. Henricksen teaches the base (201) having protuberance (232). It would have been obvious for one of ordinary skill in the art at the time the invention was made to have added protuberance to Makino et al.'s base as taught by Henricksen to provide security for container to remain mounted on the base.

Makino et al. teaches the retaining member is a loop but fails to teach the loop is flexible. It would have been obvious for one of ordinary skill in the art at the time the invention was made to have modified the loop to flexible to provide convenience for inserting the neck of container through the loop.

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In regards to claim 6, Makino et al. teaches the base and the back member but fails to teach the base and back member are removable from each other. It would have been obvious for one of ordinary skill in the art at the time the invention was made to have base and back member removed from each other for convenience of storage.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Makino et al. in view of Weatherly and in further view of Henricksen.

Makino et al. teaches the base but fails to teach the base having a protuberance. Henricksen teaches the base (201) having protuberance (232). It would have been obvious for one of ordinary skill in the art at the time the invention was made to have added protuberance to Makino et al.'s base as taught by Henricksen to provide security for container to remain mounted on the base.

Claims 16-17 and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Makino et al. in view of Henricksen and in further view of Weatherly.

Makino et al. teaches a device comprising a base (116) defining a receiving area, a back member (118) extending upwardly from the base, an adjustable tensioner (110, 120) and a retaining member (106) adapted to be coupled to a container and to the tensioner. The tensioner comprises a slider (110) and a back bracket (120) moveable relative to each other for tensioning of the retaining member during adjustment of the tensioner. The retaining member comprises one rigid section. The back member includes a marketing material (plastic, col. 2, line 65).

Makino et al. teaches the base but fails to teach the base having a protuberance. Henricksen teaches the base (201) having protuberance (232). It would have been obvious for one of ordinary skill in the art at the time the invention was made to have added protuberance to

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Makino et al.'s base as taught by Henricksen to provide security for container to remain mounted on the base.

Makino et al. teaches the retaining member is a loop but fails to teach the loop is flexible. It would have been obvious for one of ordinary skill in the art at the time the invention was made to have modified the loop to flexible to provide convenience for inserting the neck of container through the loop.

Makino et al. teaches the device but fails to teach the device is adapted to be attached to a store shelf. Weatherly teaches the device has connector for attaching to a store shelf. It would have been obvious for one of ordinary skill in the art at the time the invention was made to have added connector to Makino et al.'s device as taught by Weatherly to provide convenience for mounting device on shelf.

Claims 32, 35 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Makino et al.

Makino et al. teaches a device comprising a base (116) defining a receiving area, a back member (118) extending upwardly from the base, an adjustable tensioner (110, 120) and a retaining member (106) adapted to be coupled to a container and to the tensioner. The tensioner comprises a slider (110) and a back bracket (120) moveable relative to each other for tensioning of the retaining member during adjustment of the tensioner. The retaining member comprises one rigid section.

Makino et al. teaches the retaining member is a loop but fails to teach the loop is flexible. It would have been obvious for one of ordinary skill in the art at the time the invention was made

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to have modified the loop to flexible to provide convenience for inserting the neck of container through the loop.

In regards to claim 35, Makino et al. teaches the tensioner comprises slider, back bracket, retaining member but fails to teach the slider having a hook. However in figure 4 in Makino et al.'s invention which is a different embodiment shows a hook (410) mounted on slider (110). It would have been obvious for one of ordinary skill in the art at the time the invention was made to have modified slider with hook to provide better security for remaining connected opening (slot) of the back member.

Claims 12 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Makino et al. in view of Weatherly and in further view of US Patent # 6,663,068 to Huang.

Makino et al. teaches the back member but fails to teach the back member is adapted to be attached to a pole. Huang teaches the back member (11) is adapted to a pole. It would have been obvious for one of ordinary skill in the art at the time the invention was made to have used back member of Makino et al. to attach on a pole to provide convenience for mounting back member on the tubular object such as pole.

Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Makino et al. in view of Huang.

Makino et al. teaches the back member but fails to teach the back member is adapted to be attached to a pole. Huang teaches the back member (11) is adapted to a pole. It would have been obvious for one of ordinary skill in the art at the time the invention was made to have used back member of Makino et al. to attach on a pole to provide convenience for mounting back member on the tubular object such as pole.



***Allowable Subject Matter***

Claim 34 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 42 is allowed.

In regards to claim 34, the prior art fails to teach wherein the retaining member engages a hook on the slider. In regards to claim 42, the prior art fails to teach the generally flexible retaining member adapted for connecting to a hook on the slider.

***Response to Arguments***

Applicant's arguments with respect to claims 1-2, 6-13, 16-17, 19-22, 25-28, 30-38 and 41 have been considered but are moot in view of the new ground(s) of rejection.

The examiner drafted a proposed claim language for independent claims 1, 10, 16, 21, 27, 33, 35 and 41 to overcome US Patent # 6,820,770 to Makino et al. to place this application in condition for allowance. See proposed claims below:

1. A device for displaying a dispensing container comprising :  
a base defining a receiving area adapted for receiving the dispensing container, said base having a bottom wall with a protuberance, said receiving area at least partially defined by said protuberance in said bottom wall;  
a back member extending upwardly from said base;  
a generally flexible retaining member adapted to be looped around a portion of the dispensing container and to be arranged such that when the dispensing container is disposed

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in said base and said retaining member is placed in tension the dispensing container is retained in said base and biased in a downward direction and toward said back member; and a tensioner to maintain said retaining member in tension when said retaining member is looped around a portion of the dispensing container, said tensioner comprising a loop, hook and slide arrangement;

---wherein said hook retains the retaining member therein.---

- 10 A device adapted for displaying a product container from a support, said device comprising:  
a base defining a receiving area adapted for receiving the product container;  
a back member extending upwardly from said base;  
a generally flexible retaining member adapted for looping around a portion of the product container and arranged such that when the product container is disposed in said base and said retaining member is placed in tension, the product container is retained in said base and biased in a downward direction and toward said back member;  
a connector engaged with said back member and adapted to connect said back member to the support;  
wherein said back member has a slider and a back bracket such that adjustment of said slider maintains said retaining member in tension when the product container is disposed in said base; and  
wherein said retaining member is a loop, and further having a tensioner comprising said loop and a hook attached to said slider, said loop being adapted for looping around the product container and said hook and said slider being adjustable relative to the product container for maintaining said retaining member in tension when looped around a product container;  
---said slider comprises hook for retaining the retaining member therein.---

- 16 A device for displaying a product container from a support, said device comprising:  
a base defining a receiving area adapted for receiving the product container, said base having a bottom wall with a protuberance, said area for receiving the product container at least partially defined by said protuberance in said bottom wall;  
a back member extending upwardly from said base, and being comprised of a slider and a back bracket;  
a generally flexible retaining member adapted for looping around a portion of the product container and around a portion of the slider and arranged such that when the product container is disposed in said base and said slider and said back bracket are moved relative to each other the tension on said retaining member is adjusted; and  
a connector engaged with said back member and adapted to attach to the support;  
---said slider comprises hook for retaining the retaining member therein;---  
\*\*whereby the container is biased in a downward direction toward the base and back member when the retaining member is in tension\*\*

- 21 A method for displaying a product container from a support comprising :  
providing a base defining an area for receiving the product container;

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providing a back member extending upwardly from said base, said back member comprising a back bracket and slider movable relative to each other;  
placing a product container in said base;  
passing a retaining member around a portion of said product container and engaging said retaining member with said slider;  
moving said back bracket and said slider relative to each other to adjust the tension in said retaining member and bias said product container in a downward direction and toward said back member; and  
attaching said back member to said support;

---said slider comprises hook for retaining the retaining member therein.---

- 27 A device for displaying a dispensing container while being mounted to a support in a store, comprising:

a base defining a receiving area adapted for retaining a dispensing container;

a back member extending upwardly from said base;

an adjustable tensioner;

a retaining member adapted to be coupled to a dispensing container and to said tensioner to enable an adjustment of said tensioner to bias the dispensing container in a downward direction and against said back member, whereby the dispensing container can be firmly held in place to a support while being accessible to customers for examining the contents of the dispensing container; and

wherein said tensioner comprises a slider and a back bracket moveable relative to each other for tensioning of said retaining member during adjustment of said tensioner;

---said slider comprises hook for retaining the retaining member therein.---

- 33 A device for displaying a dispensing container from a store shelf comprising;

A base for supporting the dispensing container;

a back member extending upwardly from said base said back member further comprises a slider and a back bracket movable relative to each other

a retaining member adapted to surround a portion of the dispensing container and engaging said slider wherein the tension on said retaining member is adjusted by the relative movement between said slider and said back bracket

---said slider comprises hook for retaining the retaining member therein.---

- 35 A device for displaying a dispensing container from a support in a store comprising:

a base defining a receiving area adapted for receiving the dispensing container;

a back member extending upwardly from said base, said back member further comprises a slider and a back bracket being movable relative to each other to adjust the overall height of said back member;

an adjustable retaining member adapted to be positioned around a portion of the dispensing container and connected to said back member such that said retaining member retains the dispensing container in a substantially upright position in said receiving area and the dispensing container is biased downward and toward said back member;

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a tensioner comprised of said slider, said back bracket, said retaining member and a hook on said slider for adjusting the tension on said retaining member; and a connector adapted for connecting said device to the support.

---wherein said hook retains the retaining member therein.---

- 41 A device adapted for displaying a product container from a support, said device comprising; a base defining a receiving area adapted for receiving the product container; a back member extending upwarding from said base, the back member having a slider and back bracket being movable relative to each other; and a generally flexible retaining member adapted for looping around a portion of the product container and for connecting to said slider, and said flexible retaining member being arranged such that when the product container is disposed in said base and said back bracket and slider are moved relative to each other, the tension in said retaining member is adjusted, **\*\*whereby the container is biased in a downward direction toward to the base and back member when the retaining member is in tension\*\***  
---said slider comprises hook for retaining the retaining member therein.---

- 42 A device adapted for displaying a product container from a support, said device comprising; a base defining a receiving area adapted for receiving the product container; a back member extending upwardly from said base, the back member having a slider and back bracket being movable relative to each other; a generally flexible retaining member adapted for looping around a portion of the product container and for connecting to a hook on said slider; and a tensioner comprised of said slider, back bracket, retaining member and hook for adjusting the tension on the retaining member.  
---wherein said hook retains the retaining member therein.---

The proposed language under asterisk is what we agreed on 2/3/06 and the proposed language under dash is what I am proposing to overcome US Patent # 6,820,770 to Makino et al.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alfred Joseph Wujciak III whose telephone number is (571) 272-6827. The examiner can normally be reached on 8am-4:30pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on (571) 272-6815. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Alfred Joseph Wujciak III

Examiner

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A handwritten signature in black ink, appearing to read 'A. Joseph Wujciak III', with a stylized, overlapping flourish at the end.

2/3/06